



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2004

Mr. Darrell G-M Noga
Roberts & Smaby P.C.
1717 Main Street
Suite 3000
Dallas, Texas 75201

OR2004-6103

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205878.

The City of Coppell (the "city"), which you represent, received a request for specified "911 call sheets," "911 tapes," and "police or incident reports" for certain periods of time. You claim that some of the requested information is excepted from disclosure pursuant to sections 552.101, 552.108, 552.117, 552.130, and 552.305 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Section 552.301(a) requires that a governmental body request a ruling from this office when it receives a written request for information that it wishes to withhold and for which there has not been a previous determination. Pursuant to section 552.301(e), the governmental body must submit the following information to this office within fifteen business days of its receipt of the request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing

¹ We note that section 552.305 of the Government Code is not a recognizable exception to disclosure under the Public Information Act (the "Act"). Accordingly, this ruling does not address whether any portion of the requested information is excepted from disclosure under section 552.305 of the Government Code.

the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(a), (e).

With regard to two "informational reports" that you indicate are responsive to the request for information, you state that you provided the requestor with these reports "with normal statutorily required redactions." We note that the city does not assert that any portion of this redacted information is excepted from disclosure under the Act. Further, we note that the city failed to submit any of this redacted information to us for our review and does not inform us that any portion of this particular information is subject to a previous ruling from this office. In addition, you do not assert, nor has our review of our records indicated, that you have been granted a previous determination to withhold this redacted information from the requestor without seeking a ruling from this office. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 (2001) (delineating elements of attorney general decisions that constitute previous determinations for purposes of Gov't Code § 552.301(a)). Because this redacted information is not subject to either of the types of previous determinations and you have not submitted it to us for our review, we find that you have failed to comply with section 552.301 with respect to the redacted information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301(e) results in the legal presumption that the information at issue is public and must be released. Information that is presumed public must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). However, you have not submitted arguments regarding this redacted information or the information itself for our review. We therefore have no basis for finding such information confidential. Thus, we have no choice but to order you to comply with section 552.302 and release the entirety of this redacted information to the requestor.

Next, we note that section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy. Information is protected from disclosure by the common-law right to privacy when (1) it is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information

considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor, in part, seeks copies of unspecified information in which two specified individuals are identified as defendants. Thus, the request requires the city to compile information relating to these individuals. Based on the reasoning set out in *Reporters Committee*, we conclude that such a compilation implicates the specified individuals' right to privacy to the extent that it includes investigations where either of the named individuals was a criminal suspect, arrestee, or defendant. Accordingly, we conclude that to the extent that the city maintains responsive information that reveals that either specified individual was a criminal suspect, arrestee, or defendant, such information must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.²

In summary, the city must release to the requestor the information that it redacted from the two responsive "informational reports" that it provided to the requestor. To the extent that the city maintains responsive information that reveals that either individual specified in the request for information was a criminal suspect, arrestee, or defendant, such information must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

² As our ruling is dispositive, we need not address your remaining claimed exceptions to disclosure.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 205878

Enc. Marked documents

c: Mr. Ryan Greene
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(w/o enclosures)